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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,451	02/15/2002	Doug Mercier	111942	8744

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,451

Applicant(s)

MERCIER ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5,8-13,17-19 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,8-13,17-19 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02/15/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the third attachment mechanism comprising an inner set of attachment projections and an outer set of attachments projections having inner and outer sets" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 11 is objected to because of the following informalities: the first word (more) in line 25 should be deleted. Moreover, the term "container-side" should be replaced with container for clarity. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 5, 8-13, 17, 18, and 21-23 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s)

contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 1, 11, and 22, it has not been adequately disclosed as to how the third attachment mechanism consists of an inner set of projections and an outer set of projections. It is unknown how the to are situated on the container lid. Moreover, it is not clear if they will both contact the first attachment projections no is it clear that the projections would be angled in the same direction. This is a new matter rejection.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 5, 8-13, 17, 18, and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 11, and 22, and 23 it has not been adequately disclosed as to how the attachment mechanisms consists of an inner set of projections and an outer set of projections. It is unknown how the to are situated on the container lid. Moreover, it is not clear if they will both contact the first attachment projections. It is not clear what is being claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9, 11-13, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Roop (US 2,695,115). Regarding claims 1, 11, and 22, Abrums does not teach the first attachment mechanism or container-side attachment mechanism is a plurality of projections or that the projections are oblique with respect to the bottom surface. Roop, as seen in Fig. 1-6, teaches stacking and nesting containers similar to Abrums where there are a plurality of projections that are oblique with respect to the bottom surface. It would have been obvious to use the plurality of oblique projections of Roop in the containers of Abrums to provide an alternative way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic. The two sets of projections are not required since they represent new matter. Regarding claim 5, see Fig. 3a where the second attachment projection is 58 and protrudes from the inside surface of the lid. Regarding claims 9 and 18, see Fig. 2a where the circumferential walls 56 and 54a have no protrusions on their exterior surfaces. Regarding claim 20, as it is best understood, Abrums does not teach that all the attachment projections are oblique with respect to the surfaces from which they project. Roop, as seen in Fig. 1-6, teaches stacking and nesting container similar to Abrums where there are a plurality of projections where all of the projections have faces that are acute with respect to the surface from which they project. It would have been obvious to use the plurality of acute faced projections of Roop in the containers of Abrums to provide an alternative

way to join the container and lids or to provide a more positive lock between the containers. Moreover, it would have been obvious to substitute the non-annular projections of Roop in the containers of Abrums to save on plastic. The faces are acute when measured in one direction and obtuse when measured in a complementary direction. Regarding claim 21, all the projections are a plurality as modified by Roop. Regarding claim 22 and 23, the inner and outer sets are not required as they represent new matter.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Roop as applied to claim 1 above and further in view of Fritz (US 5,423,453). Regarding claims 8 and 17, the modified container of Abrums does not teach that the container is transparent. Fritz teaches a similar container that is transparent. It would have been obvious to employ the transparent material of Fritz in the container of Abrums so that the contents could be seen from the exterior of the container.

Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrums in view of Roop as applied to claim 1 above and further in view of Andress et al (US 5,356,026). Regarding claims 10 and 19, the modified container of Abrums teaches a ridge in the container but does not teach the one or more notches provided in the ridge. Andress et al as, seen in Fig. 1, teaches at least one notch in a ridge. It would have been obvious to employ the notch of Andress et al in the container of Abrums to make it easier to remove the lid as taught by Andress et al.

Claims 1, 5, 9, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1811773 in view of Roop. Regarding claim 1, DE 181773 (see Fig. 1a) does not teach the projections are segments. Roop teaches a similar structure where the projections are segments. It would have been obvious to employ the segments of Roop in the container of De 1811773 to use less plastic. Regarding claim 5, all the attachments are a plurality of projections as modified by Roop. Regarding claim 9, an outer circumference of the lid is free of any projections. Regarding claim 22 and 23, the inner and outer sets are not required as they represent new matter.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1811773 in view of Roop as applied to claim 1 above and further in view of Fritz (US 5,423,453). Regarding claim 8, the modified container of DE 181773 does not teach that the container is transparent. Fritz teaches a similar container that is transparent. It would have been obvious to employ the transparent material of Fritz in the container of DE 1811773 so that the contents could be seen from the exterior of the container.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1811773 in view of Roop as applied to claim 1 above and further in view of Andress et al (US 5,356,026). Regarding claim 10, the modified container of DE 1811773 teaches a ridge in the container but does not teach the one or more notches provided in the ridge. Andress et al as, seen in Fig. 1, teaches at least one notch in a ridge. It would have been obvious to employ the notch of Andress et al in the container of DE 1811773 to make it easier to remove the lid as taught by Andress et al.

Claims 12, 13, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1811773 in view of Roop and further in view of Andress et al. Regarding claim 12, DE 181773 (see Fig. 1a) does not teach the projections are segments. Roop teaches a similar structure where the projections are segments. It would have been obvious to employ the segments of Roop in the container of De 1811773 to use less plastic. The modified container of DE 181773 does not teach the plurality of nesting containers and lids. Andress et al teaches a plurality of nesting containers and lids. It would have been obvious to provide a plurality of nesting containers and lids as taught by Andress et al to provide user with more than one container as taught by Andress et al. Regarding claim 13, see Andress et al where the containers nest in this fashion. Regarding claim 18, the lids are free from protrusions. The inner and outer sets are not required as they represent new matter. Regarding claim 19, the modified container of DE 1811773 teaches a ridge in the container but does not teach the one or more notches provided in the ridge. Andress et al as, seen in Fig. 1, teaches at least one notch in a ridge. It would have been obvious to employ the notch of Andress et al in the container of DE 1811773 to make it easier to remove the lid as taught by Andress et al.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1811773 in view of Roop and Andress et al applied to claim 12 above and further in view of Fritz (US 5,423,453). Regarding claim 17, the modified container of DE 181773 does not teach that the container is transparent. Fritz teaches a similar container that is transparent. It would have been obvious to employ the transparent material of Fritz in



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the container of DE 1811773 so that the contents could be seen from the exterior of the container.

### ***Response to Arguments***

Applicant's arguments filed 8/19/03 have been fully considered but they are not persuasive. The combination of references does not teach the inner and outer sets of projections but they are not required since they constitute new matter. .

Applicant's arguments with respect to claims 1, 5, 8-13, 17-19, and 21-23 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'CM'.

JCM  
November 1, 2003

A handwritten signature in black ink, appearing to be 'SKC' followed by a long horizontal stroke.

Stephen K. Cronin  
Primary Examiner